(1992) 03 GUJ CK 0033

In the Gujarat High Court

Case No : Criminal Appeal No. 683 of 1984

The State of Gujarat APPELLANT

Vs

Patel Haribhai Bhaychandas RESPONDENT

Date of Decision : 17-03-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 378
Gujarat Entertainment Tax Act, 1977 — Section 15, 16, 17, 2, 3
Penal Code, 1860 (IPC) — Section 401, 465, 468, 471

Citation : (1993) CriLJ 143

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : S.P. Dave, Addl. P.P, for the Appellant; H.L. Patel, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—This appeal u/s 378 of the code of Criminal Procedure, 1973 (''Code'' for short hereinafter) is directed against the order of

acquittal passed by the Learned J.M.F.C. Chanasma on 10-2-84, in a Criminal Case No. 43/83.

2. The respondent is the original accused, who was charged for the offences punishable under Sections 465, 468, 401, of I.P. Code and also

under Sections 3 and 8 read with Sections 16 and 17 of the Gujarat Entertainment Tax Act, 1977 (''Act'' for short hereinafter). The case of the

prosecution is that accused is the owner of Jai Bajarang Touring Talkies run at village Dhinoj in Chansma Taluka of Mehsana District. On 22-1-82

at about 9.20 p.m, three Entertainment Inspectors namely (i) Mr. B. P. Pandya, (ii) Mr. P. P. Patel, and (3) Mr. D. P. Patel, made surprise raid in

the said i Talkies. It was found by them that tickets were not issued for balcony seats. However, three persons were found in the balcony section.

Three tickets were found from cine-goers and one ticket was found from the doorkeeper bearing Nos. 3778, 3779, 3780 and 3781. Tickets

bearing such numbers had been issued earlier. The said tickets found by the Inspectors had unprinted numbers. The tickets bearing such numbers

had been exhausted and issued on or before 21-1-82. Therefore, it was alleged that the accused was indulging in duplicate tickets with a view to

avoid Entertainment Tax. In course of the said raid it was also found that in the upper stall 61 persons were sitting and they were without tickets. It

was alleged that those persons were allowed to enjoy the entertainment without payment of tax. On the aforesaid grounds a show-cause notice

was issued on 3-2-82. It was replied by the accused on 15-2-82. As reply was not found satisfactory a criminal complaint was filed in the Court

of Learned J.M.F.C, Chanasma on 9-8-82. The learned Magistrate sent the matter for police enquiry u/s 156(3) of the Code. On investigation

police found prima facie that there were some offences were committed by the accused. Therefore, the accused was charge-sheeted and the Court

framed the charge at Ex.8 for the offences punishable under Sections 465, 468, 401 of I.P. Code and Sections 3 & 7 read with Sections 16 & 17

of the Gujarat Entertainments Tax Act, to which accused person denied and claimed to be tried.

3. On appreciation of the evidence on record the Learned trial Magistrate was pleased to acquit the accused from all the charges against him, and

hence, this acquittal appeal by the State u/s 378 of the Code.

4. Section 465 of I.P. Code provides punishment for forgery. Section 468 provides punishment for forgery for purpose of cheating. Section 471

provides punishment for using as genuine a forged document. Section 3 of Gujarat Entertainment Tax Act provides a provision for tax on payments

for admission to entertainments. Section 7 of the Act also provides a provision for regulating admission to entertainment. Under the aforesaid Act

the State Government is empowered to levy the tax on entertainment and to regulate the admission to entertainments. What is entertainment is

defined in Section 2(a) of the Act. It includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment.

The definition given in Section 2(e) is inclusive definition and the expressions so defined must, therefore, first be understood in their ordinary meaning and then in their enlarged meaning because it is well settled that the legislature resorts to and inclusive definition for the purpose of

enlarging the meaning of the expression it defines. Section 15 of the Act provides punishment for contravention of Section 7. Thus where any

proprietor admits any person to any place of entertainment in contravention of the provisions of Section 7, such proprietor shall on conviction, be

punished with fine which may extend to five hundred rupees. Section 16 of the Act provides punishment for contravention of other provisions. It

means any person who contravenes any of the provisions of this Act other than Section 7, shall on conviction, be punished with fine which may

extend to five hundred rupees.

5. Looking to the entire scheme of said Act it becomes very clear that the purpose of such an act is to consolidate and amend the law relating to

the imposition of a tax on entertainments in the State of Gujarat.

6. In view of the aforesaid legal position the merits of the present appeal are required to be examined. This Court is taken through the impugned

acquittal order and the evidence on record. In the facts and circumstances and the evidence emerging from the record, it cannot be contended that

the impugned acquittal order is unustified. The learned A.P.P. Mr. Dave, has not been able to point out any material or any evidence which would

warrant the interference of this Court in this acquittal appeal. The conclusion of the Learned Trial Magistrate that the accused is entitled to the

benefit of doubt appears to be reasonable and plausible. Unfortunately the Entertainment Inspectors did not seize the material documentary

evidence at the relevant point of time. Statements of important witnesses were not recorded by the police in the Courts of investigation. The cine-

goers from whose possession the tickets were found were also not examined by the prosecution. The manner and mode in which the raid was

effected and investigation was carried out does not seem to be proper.

Following circumstances are considered material of significant for giving benefit of doubt to the accused (i) the names and addresses of the three

cine-goers, who were found in the talkies without proper entertainment tickets were not collected. Neither these three cine-goers statements were

recorded nor they were examined, (ii) The seizure of tickets from the said three cine-goers and the Manager of the talkies was not effected by recording a Panchanama, (iii) Though the police statement was recorded the Manager of the talkies was not examined, (iv) The attention of the

owner of the talkies was not drawn by the raiding party towards the said irregularities and the said discrepancies noticed by the raiding party, (v)

The entertainment tickets were issued to the three cine-goers by whom that could have been ascertained from and deposed by the three said cine-

goers if they were examined. Not only that they were not even questioned by the raiding party, (vi) There is no evidence to show that disputed

tickets were got printed by the accused. No such enquiry was also made by the investigating officer in the course of the investigation, (vii) How the

incriminating tickets came to be printed and at whose instance where and how they came to be distributed. No evidence lead by the prosecution

on this count, (viii) The tickets which were seized were not produced earlier in the proceedings in the Trial Court. They were produced by the

witness in course of his evidence, (ix) No reasonable explanation is given by the investigation officer as to why the tickets were not seized by him

as muddamal articles, (x) No reasonable explanation was adduced as to how a counter-foil of ticket bearing No. 3781 came in the hands of door-

keeper of said talkies at the relevant point of time, (xi) No evidence was adduced to show that these tickets were tax free tickets.

7. The aforesaid circumstances weaken the version of the prosecutor. It cannot be gain said that door-keeper or the manager of the said talkies

and not the owner-accused might have also admitted the cine-goers in the said talkies on day when surprise raid was effected by the Entertainment

Inspectors. In the facts and circumstances it cannot be concluded without any shadow of doubt that owner accused and nobody else had issued

duplicate tickets and that he had committed offences punishable under Sections 465, 468 and 471 of the I.P. Code. There is no evidence which

would prove beyond reasonable doubt that the accused an owner and not the Manager or door-keeper had committed offences punishable under

Sections 15 and 16 of the Gujarat Entertainments Tax Act. The material ingredients attracting the rigorous of the said provisions are not established

beyond reasonable doubt. In the circumstances the conclusion reached by the Learned Magistrate cannot be said to be unreasonable or

unjustified. Having regard to the facts and circumstances and the evidence on record the prosecution was failed to prove the guilt of the accused beyond reasonable doubt and therefore the Learned Trial Magistrate was justified in acquitting the accused from the said charges against him by

giving benefit of doubt. There appears to be no substance in the present appeal.

In the result the appeal is dismissed.

